

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1, 2, 4, 6-12, 16, 18, 29, 34, 36, 37, 39, 41 and 42, drawn to a method of detecting a microorganism in an aqueous solution or suspension, as specifically recited in instant claim 1.

Group II, claim(s) 59, drawn to a method of detecting at least one of at least n microorganism species in an aqueous solution or suspension, as specifically recited in the claim 59.

The inventions listed as Groups (I-II) do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

Instant claim 1, as presented, requires the technical feature of using **microspheres coated with antibodies or antibody fragments** in order to produce an **agglutination reaction** for detecting a microorganism. Since the technical feature AS CLAIMED is known in the art, see DHARAKUL et al. (discloses a method of rapid detection and identification of *Burkholderia pseudomallei* in blood cultures using latex agglutination test; [U]; abstract, Materials & Methods, page 659, in particular) no special technical feature unites these inventions in a category. The expression “special technical feature” shall mean those technical features that define a contribution which each of the claimed inventions (see instant claims 1 and 28, as amended, in particular), considered as a whole, makes over the prior art (PCT Rule 13.2). Thus, a feature found in the prior art cannot be considered to be a special technical feature. Moreover, the inventions of groups I and II are directed to processes that encompass distinct method steps, components used (i.e. distinct antigen-specific antibodies, etc.), and achieve distinct end points/results.

Specie Election

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This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1. The species are as follows:

If the invention of group I is elected, applicants are required to elect a single **bacterial specie** from instant claim 16 as follows:

Staphylococcus sp., a *Pseudomonas sp.*, a *Listeria sp.*, an *Enterobacteriaceae species*, a *Vibrionaceae species*, a *Clostridium sp.*, a *Campylobacter sp.*, a *Bacillus sp.*, *Escherichia coli*, a *Sarcina sp.*, a *Flavobacterium sp.*, a *Bacillus sp.*, an *Alcaligenes sp.*, a *Micrococcus sp.*, a *Serratia sp.*, a *Klebsiella sp.*, a *Streptococcus sp.*, a *Herellea sp.*, a *Corynebacterium sp.*, a *Mycoplasma sp.*, a *Pseudomonas sp.*, a *Citrobacter sp.*, a *rrreponema sp.*, a *Salmonella sp.*, *Serretia marcescens*, *Yersinia enterocolitica*, a *Legionella sp.*, a *Bartonella sp.*, and a *Brucella sp.*

Applicant is required, in reply to this action, **to elect a single species** to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The following claim(s) are generic: claim 1 (for group I).

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: Pursuant to PCT Rule 13.2 and PCT Administrative Instructions, Annex B, Part 1(f)(I)(B)(2), the species are not art-recognized equivalents.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the

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currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SATYENDRA K. SINGH whose telephone number is (571)272-8790. The examiner can normally be reached on 9-5MF.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon P. Weber can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 1657

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Art Unit 1651